

IN THE SUPREME COURT OF THE STATE OF NEVADA

RALPH EUGENE GOODMAN, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58747

FILED

JUL 25 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Appellant argues that the district court erred in denying his claim of ineffective assistance of trial counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). Both components of the inquiry must be shown, Strickland, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Analysis of an ineffective-assistance claim begins with the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Strickland, 466 U.S. at 689. We give deference to the district

court's factual findings regarding ineffective assistance of counsel but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

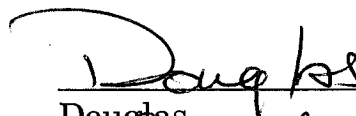
Appellant argues that trial counsel provided ineffective assistance by failing to conduct a sufficient pretrial investigation, which would have revealed that appellant did not have the physical ability to commit the murders and that he had a drug addiction so serious that it affected his ability to premeditate and deliberate. Specifically, appellant contends that counsel did not interview three potential witnesses who had knowledge about appellant's drug use and the physical injuries that appellant incurred in a car accident approximately a month before the murders. Appellant failed to demonstrate that counsel was deficient for failing to interview these witnesses. At the evidentiary hearing, the three potential witnesses, who were friends of the appellant, testified that trial counsel had not contacted them. Neither appellant nor trial counsel testified at the evidentiary hearing, and appellant presented no evidence that counsel was or should have been aware of these potential witnesses. Thus, counsel could not have been deficient for failing to interview witnesses who were not known to him.


Appellant also did not meet his burden of demonstrating that counsel's failure to investigate or present alternative defense theories constituted deficient performance. See Means, 120 Nev. at 1012, 103 P.3d at 33. Appellant's mother testified at the evidentiary hearing that she had informed counsel about appellant's physical injuries and drug use before trial. However, the testimony during the evidentiary hearing did not support appellant's claim that he was physically incapable of committing the murders, and the record indicates that such a defense at trial would

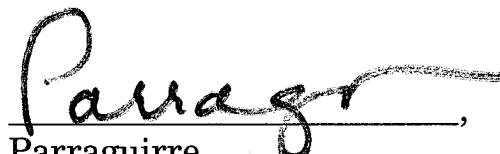
have opened the door to prejudicial evidence regarding the circumstances of his physical injuries. As for his drug-addiction defense, appellant conceded in his petition that ample evidence of his drug addiction was produced at trial. Further, the theory of defense at trial was that appellant's codefendant committed the murders and appellant was present but not involved, and appellant failed to show that counsel's decision to present this defense, rather than a defense that appellant committed the murders but was high on methamphetamine at the time, was not "sound trial strategy." See Strickland, 466 U.S. at 689 (internal quotations omitted).

Moreover, we conclude that appellant failed to meet his burden of showing prejudice. Appellant has not provided the trial transcripts for this court's review on appeal. See Thomas v. State, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004); Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980). Based on a review of the incomplete record before us, we conclude that he failed to demonstrate a reasonable probability of a different outcome had the witnesses testified at trial. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Valorie J. Vega, District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk